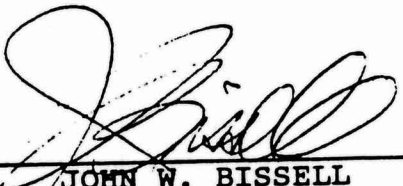


1. that pursuant to Federal Rule of Civil Procedure 42(a), the above-captioned actions are hereby consolidated for all purposes under Civil Action No. 89-5064; and

2. that the Consent Decree lodged in Civil Action No. 89-5064(JWB) is hereby entered.



JOHN W. BISSELL
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

-11A

UNITED STATES OF AMERICA,
THE STATE OF NEW JERSEY,
Plaintiffs,
v.
OCCIDENTAL CHEMICAL CORPORATION,
CHEMICAL LAND HOLDINGS, INC.,
Defendants.

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02-91-CO10

CIVIL ACTION NO.

89-5064

, J.W.B

CONSENT DECREE



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

THE STATE OF NEW JERSEY,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL CORPORATION,

CHEMICAL LAND HOLDINGS, INC.,

Defendants.

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CIVIL ACTION NO.

, J.

CONSENT DECREE

WHEREAS, on _____, 1989, the United States of America ("the United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of New Jersey, Department of Environmental Protection ("the State"), filed a Complaint in this matter against Occidental Chemical Corporation ("OCC"), as successor to Diamond Shamrock Chemicals Company, and Chemical Land Holdings, Inc. ("CLH") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601 et seq., and the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("NJDEP") pursuant to N.J.S.A. 13:1D-1 et

seq., the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., and the authority delegated to the Assistant Director of the Responsible Party Cleanup Element of the Division of Hazardous Waste Management of NJDEP pursuant to N.J.S.A. 13:1B-4 for the recovery of past response costs incurred by the United States and the State and for conduct of remedial design, remedial construction, operation and maintenance, remedy evaluation activities and Site stabilization activities in response to alleged releases and substantial threat of releases of hazardous substances into the environment at the Diamond Alkali Superfund Site located in the City of Newark, County of Essex, New Jersey, sometimes referred to as the Diamond Shamrock Superfund Site;

WHEREAS, Diamond Shamrock Corporation, which was named Diamond Alkali Company until 1967, operated a plant situated at the 80 Lister Avenue portion of the Diamond Alkali Superfund Site from 1951 through 1969, where, among other chemicals, the company manufactured 2,4-D, 2,4,5-T and 2,4,5-Trichlorophenol, from which 2,3,7,8-Tetrachlorodibenzo-p-dioxin is a by-product. Diamond Shamrock Corporation ceased production activities at the Site in August, 1969. In 1971, Diamond Shamrock Corporation sold the plant and property to Chemicaland Corporation, which

conducted certain chemical manufacturing activities for itself and others during the several years it owned and occupied the Site. Walter Ray Holding Company purchased the plant and property at a tax sale in 1980 and held the premises until 1981. Walter Ray Holding Company sold the property in June, 1981 to Marisol, Inc. which conducted salvage operations, including removal of certain materials to certain off-Site locations, and waste consolidation activities;

WHEREAS, in September, 1983, Diamond Shamrock Corporation adopted a new corporate structure. A stock holding company was formed under the name "Diamond Shamrock Corporation." The former Diamond Shamrock Corporation changed its name to Diamond Shamrock Chemicals Company, and became a subsidiary of the new Diamond Shamrock Corporation. On April 19, 1984, Diamond Shamrock Chemicals Company acquired the property located at 120 Lister Avenue from E. M. Sergeant Pulp and Chemical Co., Inc. to assist with the cleanup of the Site. Similarly, Diamond Shamrock Chemicals Company acquired the plant and property at 80 Lister Avenue from Marisol, Inc. on January 27, 1986;

WHEREAS, on September 4, 1986, Diamond Shamrock Corporation sold all the outstanding stock in Diamond Shamrock Chemicals Company to Oxy-Diamond Alkali Corporation, a wholly-owned indirect subsidiary of Occidental Petroleum Corporation. Diamond Shamrock Chemicals Company was then renamed Occidental

Electrochemicals Corporation. Title to the Site had previously been transferred by way of an intraholding company transaction to Diamond Shamrock Chemical Land Holdings, Inc., a wholly-owned indirect subsidiary of Diamond Shamrock Corporation. Effective November 30, 1987, Occidental Electrochemicals Corporation was merged into Occidental Chemical Corporation, a wholly-owned indirect subsidiary of Occidental Petroleum Corporation. On December 4, 1987, the name of Diamond Shamrock Chemical Land Holdings, Inc. was changed to Chemical Land Holdings, Inc. Chemical Land Holdings, Inc., a subsidiary of Maxus Energy Corporation, is the current holder of title to the Site;

WHEREAS, EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, placed the Diamond Alkali Superfund Site on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37070;

WHEREAS, in response to alleged releases and substantial threat of releases of hazardous substances into the environment at the Diamond Alkali Superfund Site, and pursuant to an administrative consent order entered into between NJDEP and Diamond Shamrock Chemicals Company and Marisol, Inc., and authorized on March 13, 1984 (hereinafter "ACO I"), Diamond Shamrock Chemicals Company commenced a Site Evaluation for the property located at 80 Lister Avenue, Newark, New Jersey.

Thereafter, pursuant to a second administrative consent order entered into between NJDEP and Diamond Shamrock Chemicals Company, et al. and authorized on December 21, 1984 ("ACO II"), Diamond Shamrock Chemicals Company commenced a Site Evaluation for the property located at 120 Lister Avenue, Newark, New Jersey. ACO II also required the cleanup of certain off-site properties and the transfer of contaminated materials resulting from such action to 120 Lister Avenue for storage. The Site Evaluations conducted pursuant to ACO I and ACO II for the 80 and 120 Lister Avenue properties together constitute a Remedial Investigation ("RI"), as that term is used at 40 C.F.R. §300.68, to determine the nature and extent of contamination at the Site;

WHEREAS, pursuant to ACO I and ACO II, Diamond Shamrock Chemicals Company prepared a Site Evaluation Report for the 80 Lister Avenue property dated February, 1985, a Site Evaluation Report for the 120 Lister Avenue property dated May, 1985, and a Site Evaluation Addendum for the 80 and 120 Lister Avenue properties dated February, 1986. These Reports collectively constitute an RI Report for the Site;

WHEREAS, pursuant to ACO I and ACO II, Diamond Shamrock Chemicals Company conducted a Feasibility Study ("FS"), as that term is used at 40 C.F.R. §300.68, to develop and evaluate alternatives for the remediation of the Site;

WHEREAS, pursuant to ACO I and ACO II, Diamond Shamrock Chemicals Company prepared an FS Report for the Site dated October, 1985;

WHEREAS, on August 1, 1987, pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, EPA published a notice of completion of the FS and of the proposed interim plan for remedial action, and provided opportunity for public comment to be submitted in writing to EPA by August 31, 1987, or orally at a public meeting scheduled and subsequently held in the City of Newark, New Jersey on August 11, 1987;

WHEREAS, pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, EPA made and has kept a transcript of the August 11, 1987, public meeting and has made this transcript available to the public;

WHEREAS, certain persons, including a representative of OCC, provided comments on EPA's proposed remedial action plan;

WHEREAS, EPA issued a Record of Decision on September 30, 1987, which documents the selection of a remedial action plan for the cleanup of the Site, discusses EPA's reasons for adopting such plan and responds to each of the significant comments on and criticisms of the proposed remedial action plan;

WHEREAS, the State has given its concurrence to the remedial action plan selected in the Record of Decision;

WHEREAS, EPA and NJDEP consider the selected remedial action plan to be an interim remedy in view of the periodic

evaluation of the selected remedial action required under the Record of Decision in order to assure that human health and the environment are being protected by the Remedy, taking into account, as provided in Section 121 of CERCLA, 42 U.S.C. §9621, without limitation, any changes in knowledge concerning the risks posed by dioxin and other Hazardous Materials at the Site; and to develop, screen and assess the viability of implementing remedial alternatives more protective of human health and the environment, including those alternatives which are based purely on advances in technology and those which utilize more permanent solutions;

WHEREAS, pursuant to Section 117(b) of CERCLA, 42 U.S.C. §9617(b), EPA provided notice of adoption of the selected remedial action plan in the form of the Record of Decision, including notice of the availability of the Record of Decision to the public for review at EPA and NJDEP offices, and at the local community repository at the Newark Public Library, 5 Washington Street, Newark, New Jersey;

WHEREAS, pursuant to Section 117(d) of CERCLA, 42 U.S.C. §9617(d), EPA published such notice in a major local newspaper of general circulation on December 7, 1987;

WHEREAS, in accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), the State has had a substantial and meaningful involvement in the initiation, development and selection of the remedial action to be undertaken at the Site;

WHEREAS, the State has actively participated in negotiations leading to this settlement and is a party to this settlement;

WHEREAS, pursuant to Section 122(j) of CERCLA, 42 U.S.C. §9622(j), EPA notified the Federal natural resource trustees of negotiations with potentially responsible parties ("PRPs") on the subject of addressing releases and threatened releases of hazardous substances at the Site, and EPA encouraged the participation of the Federal natural resource trustees in such negotiations;

WHEREAS, pursuant to Section 121(d)(1), the United States, the State and OCC believe that the remedial action plan adopted by EPA and set forth in the Record of Decision is consistent with the NCP;

WHEREAS, OCC agrees to implement the Work as defined, infra, in Section II of this Consent Decree, and EPA has determined that the Work will be implemented properly by OCC and that OCC is qualified to implement the Work;

WHEREAS, Diamond Shamrock Chemicals Company's obligations under ACO I and ACO II will be fulfilled if Settling Defendants comply with this Consent Decree and complete, to the satisfaction of NJDEP, those items specified by the State in writing to be developed by the State within forty-five (45) Working Days of the entry of this Decree;

WHEREAS, OCC agrees that this Consent Decree addresses only remediation of the 80 and 120 Lister Avenue properties, and does not address performance of tasks related to the Passaic River, the bedrock aquifer and other properties;

WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C. §9622, the United States, the State, OCC and CLH have each stipulated and agreed to the making and entry of this Consent Decree prior to the taking of any testimony, based upon the pleadings herein;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action and the parties to this Consent Decree pursuant to Sections 106, 107 and 113 of CERCLA, 42 U.S.C. §§9606, 9607 and 9613, and 28 U.S.C. §1345, and pendant jurisdiction over those claims arising under the laws of the State. OCC and CLH do not admit and reserve their rights to contest the jurisdiction of this Court over, and to award relief for, subject matters or activities not expressly required by this Consent Decree. The Parties agree that nothing in this Consent Decree nor the fact that it is being entered shall constitute an admission of fact or conclusion of law.

II.

DEFINITIONS

Whenever the following terms are used in this Consent Decree and the attachments hereto, the following definitions specified in this Section shall apply:

A. "Appendix" or "Appendices" means those attachments listed below, which are incorporated herein and made a part of this Consent Decree by reference:

- Appendix I - Statement of Work
- Appendix II - Cleanup Standards
- Appendix III - 80 Lister Avenue: Metes and Bounds
- Appendix III-1 - 120 Lister Avenue: Metes and Bounds
- Appendix III-2 - 80 and 120 Lister Avenue: Survey Plat

B. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq.

C. "Consent Decree" means this Consent Decree, all Appendices to this Consent Decree and all modifications to such documents. For convenience, all references in the attached Appendices to this Consent Decree shall be understood to refer to this document.

D. "Contractor" means the company or companies retained by OCC to perform the Work required by this Consent Decree and all attachments hereto.

E. "Diamond Alkali Superfund Site" means the real property located at 80 and 120 Lister Avenue, in the City of Newark, County of Essex, New Jersey, and those areas to which contamination originating at 80 Lister Avenue has migrated.

F. "Dioxin," "TCDD" and "2,3,7,8-TCDD" mean 2,3,7,8-Tetrachlorodibenzo-p-dioxin.

G. "EPA" means the United States Environmental Protection Agency.

H. "Hazardous Materials" means "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14); "hazardous substances" within the meaning of Section 3 of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11.b.k.; "pollutant" within the meaning of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-3(n); and "pollutant or contaminant" within the meaning of Section 101(33) of CERCLA, 42 U.S.C. §9601(33).

I. "National Contingency Plan" shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. §9605, and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendments thereto.

J. "NJDEP" means the State of New Jersey Department of Environmental Protection.

K. "Operation and Maintenance" and "O&M" mean those activities required by Section H of Appendix I, as may be modified pursuant to the provisions of this Consent Decree and any schedules,

plans or reports required to be submitted pursuant hereto.

L. "Parties" means the United States of America on behalf of the United States Environmental Protection Agency; the State of New Jersey, Department of Environmental Protection; Occidental Chemical Corporation; and Chemical Land Holdings, Inc.

M. "Record of Decision" and "ROD" mean that document issued on September 30, 1987, to present the remedial action plan selected by the Regional Administrator of EPA Region II to address the 80 and 120 Lister Avenue portion of the Diamond Alkali Superfund Site;

N. "RCRA" means the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq.

O. "Remedy" means the selected remedial alternative set forth in the Record of Decision, as described in Section VI.B, infra, and as shall be developed, implemented and/or modified pursuant to this Consent Decree.

P. "Remedial Construction" means those activities required by Section G of Appendix I, as may be modified pursuant to the provisions of this Consent Decree and any schedules, plans or reports required to be submitted pursuant hereto.

Q. "Remedial Design" means those activities required by Section F of Appendix I, as may be modified pursuant to the provisions of this Consent Decree and any schedules, plans or reports required to be submitted pursuant hereto.

R. "Remedy Evaluation" means those activities required by Section I of Appendix I, as may be modified pursuant to the provisions of the Consent Decree and any schedules, plans or reports required to be submitted pursuant hereto.

S. "Settling Defendants" means Occidental Chemical Corporation, as successor to Diamond Shamrock Chemicals Company, and Chemical Land Holdings, Inc.

T. "Site" means the real property located at 80 and 120 Lister Avenue, in the City of Newark, County of Essex, New Jersey. Such properties are designated as Block 2438, Lots 57, 58 and 59 on the Tax Map of Newark, as described by metes and bounds in Appendices III and III-1, and the survey plat in Appendix III-2.

U. "Site Stabilization" means those activities required by Section D of Appendix I, as may be modified pursuant to the provisions of this Consent Decree and any schedules, plans or reports required to be submitted pursuant hereto.

V. "State" means the State of New Jersey.

W. "Statement of Work" means that document incorporated herein as Appendix I of this Consent Decree.

X. "Work" means all work and other activities required by this Consent Decree, including, but not limited to: Site Stabilization, Remedial Design, Remedial Construction, Operation and Maintenance, Additional Work pursuant to Section VII., infra,

Remedy Evaluation, and implementation of the response actions selected pursuant to Remedy Evaluation.

Y. "Working Day" means any day of the week except for Saturday or Sunday, that is not a designated Federal or State holiday.

Z. All terms not otherwise defined herein shall have their ordinary meanings except that those terms defined in Section 101 of CERCLA, 42 U.S.C. §9601, shall have the meanings set forth therein.

III.

PARTIES BOUND

A. This Consent Decree applies to and is binding upon the undersigned Parties and their successors and assigns. Each undersigned representative of a party to this Consent Decree certifies that he or she is fully authorized by the entity which he or she represents to enter into the terms and conditions of this Decree and to execute and legally bind that entity to it.

B. The Parties agree that CLH is a party to this Consent Decree for specific, limited purposes. CLH shall allow access to the Site as provided in Section XI, infra, and shall abide by the agreements on conveyance and use of the property in this Section III.

C. OCC shall provide a copy of this Consent Decree to each chief contractor and chief subcontractor retained to perform the

Work required by this Consent Decree. Chief contractors or subcontractors shall be those contractors or subcontractors whose contracts or subcontracts for Work performed pursuant to this Consent Decree have a total value exceeding twenty-five thousand dollars (\$25,000). The obligation to provide a copy of this Consent Decree to a chief contractor or chief subcontractor shall be triggered when the planned or actual value of Work exceeds twenty-five thousand dollars (\$25,000). OCC shall be responsible to the United States and the State for ensuring that each of its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

D. Conveyance of the Site

1. Settling Defendants may convey any or all of their interest in the Site, provided that no conveyance or transfer of title, lease, easement or other interests in the Site shall be consummated without a provision permitting a continuance of the Work pursuant to this Consent Decree, and all such conveyances of title, grants of easements or other conveyances of any interest in the Site shall contain a covenant to permit such Work. At least sixty (60) calendar days prior to any conveyance, Settling Defendants having control of or ownership over the Site shall notify EPA and NJDEP by registered mail of their intent to convey any interest in the Site, and the provisions to be made allowing the continued implementation of the Work. If such property is alienated, Settling Defendants' obligations under this Consent Decree shall continue

unless the grantee agrees to assume these obligations and both EPA and NJDEP agree, in writing, to allow the grantee to assume the obligations of the grantor.

2. The restrictions and obligations set forth herein shall run with the land and shall be binding on any and all parties who acquire any interest in the Site. In addition, Settling Defendants shall promptly give notice to EPA and NJDEP of any actual conveyance or transfer of any interest they may have in any property not part of the Site but which is used to implement the Work in the immediate vicinity of the Site, to the extent such conveyance is known or should be known to Settling Defendants.

3. A notification of the existence of this Consent Decree and where and how a copy may be obtained shall be recorded by Settling Defendants in the Office of the Clerk of Essex County, State of New Jersey and any other appropriate office as a lien and encumbrance on all parcels comprising the Site. Settling Defendants agree to execute such legal instruments and documents, if any, as may be required to effectuate the recording of such notice in the Office of the Clerk of Essex County, State of New Jersey and any other appropriate office, and to pay the costs of the preparation and recording of such documents.

4. Within forty-five (45) calendar days of entry by this Court of this Consent Decree, written proof of such recording with the Office of the Clerk of Essex County, State of New Jersey and any other appropriate office as required pursuant

to Section III.D.3, supra, shall be sent to those individuals specified in Section XXX, infra.

5. Any deed, title or instrument of conveyance for the Site or any part thereof shall contain a permanent deed restriction to the benefit of EPA and NJDEP that states:

The Owner agrees not to make any use of, or take any actions at, the Site inconsistent with the Work at the Site as set forth in the Consent Decree entered in United States of America v. Occidental Chemical Corporation, Civil Action No. _____, in the United States District Court for the District of New Jersey. The Owner also agrees to the imposition of such use and/or access restrictions as may be deemed necessary by the United States Environmental Protection Agency ("EPA") and the State of New Jersey Department of Environmental Protection ("NJDEP") to insure compliance with the referenced Consent Decree and/or the integrity of the Work. The restrictions shall continue until such time as the Site is declared by EPA, in consultation with the State, to be fit for unrestricted use. The restrictions shall include provisions for the continuation of access rights. The use and access restrictions are to run with the land and be for the benefit of and enforceable by EPA and NJDEP. The Owner shall record the restrictions with the Clerk of Essex County, State of New Jersey immediately upon the request of EPA and/or NJDEP that it do so.

Settling Defendants shall include the above statements in all leases, subleases or rental agreements relating to the Site or any part thereof which are executed on or after the effective date of this Consent Decree.

6. Any such lease or sublease for the Site or any part thereof shall contain the permanent deed restriction described in Section III.D.5, supra, until such time as the Site is declared

by EPA, in consultation with the State, to be fit for the removal of those restrictions set forth in Section III.D.5, supra.

7. Any deed restriction as described above shall run with the land until such time the Site is declared by EPA, in consultation with the State, to be fit for the removal of those restrictions set forth in Section III.D.5, supra.

E. Use of the Site

Until such time as EPA and NJDEP approve otherwise, the use or development of the Site shall be in a manner consistent with the terms of this Consent Decree, including the permanent deed restrictions described in Section III.D.5, supra.

IV.

PURPOSE

The purpose of this Consent Decree is to serve the public interest by protecting the public health, welfare and the environment from releases and threatened releases of Hazardous Materials at or from the Site through the implementation of the Work, and to settle the claims asserted by the United States and the State against Settling Defendants in the Complaint.

V.

GENERAL PROVISIONSA. Permits and Approvals.

1. All activities undertaken by OCC pursuant to this Consent Decree shall be undertaken in accordance with the requirements of Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the National Contingency Plan and any amendments thereto.

2. The off-site transfer, treatment, storage or disposal of Hazardous Materials removed from the Diamond Alkali Superfund Site by OCC must be in compliance with Section 121(d)(3) of CERCLA, 42 U.S.C. §9621(d)(3). To the extent applicable to it, OCC is responsible for compliance with all requirements relating to off-site management under RCRA, and N.J.A.C. 7:26-1.1 et seq., including fulfilling the standards applicable to generators and transporters of hazardous waste promulgated at 40 C.F.R. Parts 262 and 263. In particular, this responsibility includes using and signing manifest forms for hazardous wastes transported from the Diamond Alkali Superfund Site. Furthermore, in the Site Management Plans for Remedial Construction and for Operation and Maintenance, both of which are required by Appendix I, OCC shall designate any facilities it proposes to use for such off-site transfer, storage, treatment or disposal. OCC shall conduct off-site disposal activities in conformance with the National Contingency Plan and any amendments

thereto, and the Revised Procedures for Planning and Implementing Off-site Response Actions, EPA Office of Solid Waste and Emergency Response, November 13, 1987, and any amendments thereto.

3. Approvals which may be granted by EPA, the State or other governmental entity shall not relieve OCC from any liability it may have arising from or relating to its acts or omissions or the acts or omissions of any of its contractors, subcontractors or any other person or entity acting on its behalf in the performance of the Work or its failure to perform fully or complete the Work.

4. Notwithstanding any other provision in this Consent Decree, no Federal, State or local permits shall be required for any portion of the Work conducted entirely at the Diamond Alkali Superfund Site.

B. National Contingency Plan.

1. OCC shall design, implement and complete the Work in accordance with the provisions of the National Contingency Plan, and any amendments thereto, and any standards, specifications and schedules of completion developed in accordance with Section VI, infra, or agreed to by the Parties, or ordered by this Court.

2. This Court finds and the Parties agree that the Work is consistent with the National Contingency Plan. Settling Defendants do not waive their rights to contest the consistency

with the National Contingency Plan of any further response action ordered pursuant to Remedy Evaluation.

C. If the application of any amendment to CERCLA or the National Contingency Plan after the date of lodging of this Consent Decree would substantially alter OCC's obligations under this Decree, EPA, in consultation with the State, shall determine to what extent such amendment shall be incorporated to modify those tasks remaining to be implemented in furtherance of the Work.

D. At places in this Consent Decree the obligations of the Parties are calculated in terms of a specified number of calendar days. If performance of any responsibility under this Consent Decree falls due on a Saturday, Sunday, or official Federal or State holiday, the due date for such performance is automatically extended until the end of the next day that is not a Saturday, Sunday, or official Federal or State holiday.

VI.

WORK TO BE PERFORMED

A. Commitment by OCC.

OCC agrees to finance, design, construct, operate and maintain, and conduct periodic evaluations of the Remedy in accordance with all terms, conditions and schedules set forth herein and developed and approved hereunder, and to perform the Work in accordance with Appendix I.

B. The following is a description of the components of the selected remedial alternative:

1. Construct a slurry wall tying into the silt layer underlying the Site. The slurry wall shall be designed and constructed to encircle the soil and debris at the Site which exceeds any soil cleanup standard specified in Appendix II. Where a cleanup standard is exceeded at or beyond the Site boundary, the slurry wall shall extend as close as is practicable to the Site boundary.
2. Construct a flood wall and appurtenances to protect the Site from the 100 year flood. The flood wall may be designed to incorporate the functions of the slurry wall along the Passaic River front. The design considerations for such flood wall shall include the specifications and guidances of the United States Army Corps of Engineers and NJDEP, as well as the impact of the proposed Passaic River flood control project.
3. To the maximum extent practicable, disassemble and decontaminate all non-porous permanent structures and materials to facilitate off-site reuse, recycle or disposal. Decontamination procedures shall be designed and implemented to attain the cleanup standard for dioxin specified in Appendix II. The decontamination procedures shall also be protective of human health and the environment with respect to all other Hazardous Materials known to be present at the Site.

4. To the extent practicable, transport all containers (other than those shipping containers currently stored at 120 Lister Avenue) containing Hazardous Materials, but containing less than 1.0 ppb of dioxin, off-site, for treatment or disposal.

5. Demolish all remaining structures on-site and secure all materials contaminated at or above 1.0 ppb of dioxin on-site. Secured materials shall be segregated to the maximum extent practicable. The placement of secured materials shall be in accordance with the requirements specified in Appendix II.

6. Stabilize and immobilize the contents of the remaining containers (other than those shipping containers currently stored at 120 Lister Avenue) of dioxin contaminated materials.

7. Locate and plug inactive underground conduits, and reroute active systems.

8. Haul, empty, spread and compact the contaminated materials stored at 120 Lister Avenue and, to the maximum extent practicable, decontaminate the non-porous portions of the shipping containers for off-site reuse, recycle or disposal. Decontamination procedures shall be designed and implemented to attain the cleanup standard for dioxin specified in Appendix II. The decontamination procedures shall also be protective of human health and the environment with respect to all other Hazardous Materials known to be present at the Site.

9. Install, operate and maintain a ground water withdrawal system designed to maintain a hydraulic gradient preventing the migration of ground water from the volume contained within the slurry wall.

10. Install, operate and maintain a treatment system for ground water and other aqueous liquids resulting from the Work. The treatment system shall discharge treated wastewater either to the Passaic Valley Sewerage Commission treatment works or directly to the Passaic River. The treatment system shall be designed, constructed, and operated and maintained to attain and shall attain the cleanup standards (effluent limitations) specified in Appendix II. The treatment system shall be designed, constructed, and operated and maintained in accordance with the requirements (other than administrative requirements) for discharge of treatment system effluent to navigable waters, discharge to publicly owned treatment works and discharge to surface waters specified in Appendix II, as appropriate.

11. Construct a surficial cap consisting of suitable materials designed to meet the requirements of RCRA. The cap shall cover the slurry wall and the entire area encircled by the slurry wall. The design, construction, and operation and maintenance of the cap shall be in accordance with the requirements specified in Appendix II.

12. Implement suitable monitoring, contingency, operation and maintenance, and site security plans designed to

ensure the protection of human health and the environment during the Remedial Construction and after the completion of the Remedial Construction.

13. On-site containment of all sludge generated from the wastewater treatment processes until such time that an alternative method of sludge management is approved.

14. Design, construct, and operate and maintain the Remedy to attain the cleanup standards listed in Appendix II.

C. With respect to Sections VI.B.3, VI.B.4 and VI.B.8, supra, EPA, in consultation with the State, shall determine the level constituting compliance with an individual Subparagraph "to the maximum extent practicable" or "to the extent practicable," and, in so doing, shall determine what constitutes implementation of the particular component of the selected remedial alternative for the Site.

D. Within seven (7) calendar days of the date of lodging of this Consent Decree with this Court, OCC shall commence those tasks required by Sections D and E of Appendix I and, thereafter, complete such tasks in accordance with those schedules set forth in or developed and approved under Appendix I.

E. Schedules prepared by OCC pursuant to Appendix I shall express schedule dates in terms of periods of time following prerequisite events, rather than as calendar dates. The entry of this Consent Decree by this Court shall be deemed a prerequisite event for activities conducted pursuant to Sections F, G, H and I

of Appendix I. The previous statement shall not, however, preclude OCC from performing Work in accordance with Section F of Appendix I prior to the entry of this Consent Decree, should OCC elect to do so, if OCC obtains EPA's prior written approval.

F. The timing of compliance with the requirements of Section VI.B, supra, with respect to the attainment of cleanup standards shall be governed by the following:

1. With respect to any action-specific cleanup standards specified or referenced in Appendix II, and except as expressly provided in this Consent Decree and in plans and/or schedules developed and approved by EPA, in consultation with the State, OCC shall comply with the requirements of Section VI.B, supra, during the implementation of the Work.

2. With respect to any cleanup standards specified or referenced in Appendix II which were not being attained prior to the commencement of the Work, OCC shall comply with the requirements of Section VI.B, supra, regarding such cleanup standards by not later than the completion of Remedial Construction. Such cleanup standards are not deemed action-specific cleanup standards with respect to any occurrences of non-attainment which existed prior to the commencement of the Work and continue subsequent to the commencement of the Work.

3. With respect to any cleanup standards specified or referenced in Appendix II which were being attained prior to the

commencement of the Work, OCC shall comply with the requirements of Section VI.B, supra, during the implementation of the Work.

G. With respect to the attainment of effluent limitations required by Section VI.B.10, supra, the following shall apply:

1. In the event that an analysis (or a number of analyses) of a treatment system effluent sample (or samples) yields a concentration value (or an average concentration value) for an analyte which is less than or equal to the practical quantitation limit ("PQL") value for the analytical method employed as specified in the Sampling, Analysis and Monitoring Plan for Remedial Design (see Section E.2.a of Appendix I), the effluent limitation shall be deemed to have been attained for that analyte with respect to that sample (as well as for any average effluent limitation for that analyte with respect to that group of samples). However, if at any time EPA, in consultation with the State, approves an analytical method with a lower PQL, the achievability of such new PQL or such effluent limitation, whichever is less stringent, shall be grounds for additional work pursuant to Section VI.G.5, infra, unless OCC proves to the satisfaction of EPA, in consultation with the State, that attainment of effluent values at or below the new PQL is not technically practicable.

2. In the Remedial Design Workplan required by Section E of Appendix I, OCC shall, at a minimum, set forth plans to conduct treatability studies to evaluate all known wastewater

treatment methods that are or may be feasible for the treatment of those Hazardous Materials present at the Site in order to attain the effluent limitations set forth in Appendix II.

3. In the event that the wastewater treatability studies conducted pursuant to the approved Remedial Design Workplan lead EPA, in consultation with the State, to conclude, based on technical evidence presented to EPA and the State by OCC and on any other relevant information, that it is not technically practicable to attain an effluent limitation for a particular Hazardous Material, EPA, in consultation with the State, may direct the Remedial Design to proceed based on the most stringent design criteria and effluent values which EPA, in consultation with the State, determines are technically practicable; provided that OCC proves to the satisfaction of EPA, in consultation with the State, that the most stringent design criteria, when implemented, will result in a reduced adverse impact on the water quality of the Passaic River compared to the impact associated with the unremediated ground water migration from the Site to the Passaic River. In the event EPA, in consultation with the State, directs the Remedial Design to proceed as set forth above, OCC shall not be deemed in violation of this Consent Decree for failure to attain such effluent limitations, provided that an effluent value which is based on the design criteria and is specified in the Final Design Report (see Section F of Appendix

I), is attained for the Hazardous Material or parameter to which the effluent limitation applies.

4. If OCC does not achieve the effluent values approved by EPA, in consultation with the State, pursuant to Sections VI.G.1 and VI.G.3, supra, OCC shall be deemed in violation of this Consent Decree unless OCC proves to the satisfaction of EPA, in consultation with the State, that the attainment of such effluent values is not technically practicable despite OCC's evaluation and testing of all known methods to attain such values. If EPA, in consultation with the State, agrees that OCC has proved that the attainment of such effluent values is not technically practicable, the Remedial Construction and/or Operation and Maintenance activities may continue, provided that OCC shall, as part of the Remedy Evaluation required by Section VIII, infra, evaluate and, if not previously tested, test all known methods for achieving such effluent values, and provided that OCC proves to the satisfaction of EPA, in consultation with the State, that the Final Design Report and/or Operation and Maintenance Plan, when implemented, will result in a reduced adverse impact on the water quality of the Passaic River compared to the impact associated with the unremediated ground water migration from the Site to the Passaic River.

5. Notwithstanding Sections VI.G.1, VI.G.2, VI.G.3 and VI.G.4, supra, the finding of an effluent value greater than an effluent limitation may be grounds for additional work pursuant

to Section VII, infra, and may be a factor considered in the determination of the appropriateness of additional response action pursuant to Section VIII.B, infra.

6. The relief provided by Sections VI.G.1, VI.G.2, VI.G.3 and VI.G.4, supra, may be terminated by EPA, in consultation with the State, pursuant to schedules developed by or approved by EPA, in consultation with the State, to attain more stringent effluent values established and approved pursuant to Section(s) VII and/or VIII.C, infra.

7. With respect to this Section VI G, EPA, in consultation with the State, shall determine what constitutes "technically practicable" in consideration of the EPA CERCLA Compliance With Other Laws Manual, August, 1988.

VII.

ADDITIONAL WORK

A. In the event EPA, in consultation with the State, and/or OCC determine(s) that additional work, including additional Remedial Design or Remedial Construction, is necessary to meet, at the Site, the cleanup standards described and/or referenced in Section VI, supra, and/or the Statement of Work, notification of the need for such additional work will be provided to the other parties. Additional work as defined in this Section VII shall be limited to that work which is required to achieve successful implementation of the components of the selected remedial

alternative, as set forth in Section VI.B, supra. The performance of Additional Work shall not be deemed a "modification" within the meaning of Sections XXXII.A and XXXII.C., infra.

B. Any additional work which OCC determines to be necessary is subject to approval by EPA, in consultation with the State.

C. Any additional work which is determined to be necessary by OCC and approved by EPA, in consultation with the State, or determined to be necessary by EPA, in consultation with the State, to meet the cleanup standards, shall be completed by OCC in accordance with those standards, specifications and schedules developed by OCC and approved by EPA, in consultation with the State.

D. The provisions of this Section VII shall remain effective throughout the duration of this Consent Decree.

VIII.

REMEDY EVALUATION TO ASSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT AND TO ASSESS REMEDIAL ALTERNATIVES

A. OCC shall conduct a Remedy Evaluation for the Site once every two (2) years following completion of the Remedial Construction activities required under this Consent Decree (1) to assure that human health and the environment are being protected by the Remedy implemented by OCC under this Decree, taking into account, as provided in Section 121 of CERCLA, 42 U.S.C. §9621, without limitation, any changes in knowledge concerning the risks posed by dioxin and other Hazardous Materials at the Site and addressed by this Decree; and (2) to develop, screen and assess

the viability of implementing remedial alternatives more protective of human health and the environment, including those alternatives which are based purely on advances in technology and those which utilize more permanent solutions.

B. In the event that a Remedy Evaluation results in modifications of the Remedy that may affect subsequent Remedy Evaluations in some manner, OCC may request EPA to revise the format or content of any subsequent Remedy Evaluation to accomodate the modifications. EPA, in consultation with the State, will make such revisions as it deems appropriate.

C. EPA and the State will review each Remedy Evaluation conducted by OCC. If, upon such review, EPA, in consultation with the State, determines that further response action is necessary as a result of a Remedy Evaluation conducted pursuant to Sections VIII.A.1 and VIII.A.2, supra, EPA will notify OCC of its preliminary determination with respect to the need for further study and/or remedial action. The criteria for EPA's determination regarding the necessity of further response action as a result of a Remedy Evaluation conducted pursuant to Section VIII.A.2, supra, will be the same as the criteria for the Selection of appropriate remedial actions set forth in Section 121 of CERCLA, 42 U.S.C. §9621, with the exception of the criteria set forth in Section 121(c), 42 U.S.C. §9621(c). OCC will be provided an opportunity to confer with EPA, which may coincide